

NOTICE

Decision filed 11/20/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 130025-U

NO. 5-13-0025

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

CHRISTINA L. JACOBY,

Petitioner-Appellee,

v.

C. RODNEY YODER,

Respondent-Appellant.

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Appeal from the
Circuit Court of
Madison County.

No. 12-OP-1108

Honorable
Keith Jensen,
Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Spomer and Justice Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: Where the record on appeal does not include a report of the proceedings at which the circuit court entered the challenged plenary stalking no contact order, this court must presume that the order was in conformity with the law and had a sufficient factual basis.

¶ 2 The respondent, C. Rodney Yoder, appeals from a plenary stalking no contact order entered against him and in favor of the petitioner, Christina L. Jacoby, in the circuit court of Madison County. For the following reasons, we affirm.

¶ 3 **BACKGROUND**

¶ 4 On October 16, 2012, the petitioner filed *pro se* a "Verified Petition for Stalking No Contact Order" against the respondent, pursuant to the Stalking No Contact Order Act (740 ILCS 21/1 to 135 (West 2012)). The petition alleged, *inter alia*, that during the preceding three weeks, the respondent drove past the petitioner's new residence, mailed the petitioner a letter demanding money, and threatened the petitioner's life and family. According to the

record sheet, the circuit court heard the petition on the same day it was filed. The record on appeal does not include a transcript of that hearing. However, the record sheet entry for October 16, 2012, states that the court reviewed the petition, found it satisfactory, entered an order, and scheduled another hearing for November 1, 2012. The written emergency stalking no contact order (see 740 ILCS 21/95 (West 2012)), which was effective through November 1, 2012, forbade the respondent from contacting the petitioner and from getting within 1,000 feet of the petitioner or her residence.

¶ 5 According to the record sheet, the court called the cause for hearing on November 1, 2012. Notably, the record on appeal does not include a transcript of that hearing. The record sheet entry for November 1, 2012, states that both parties appeared and agreed to the entry of a plenary order. The written plenary stalking no contact order (see 740 ILCS 21/100 (West 2012)), which is effective through October 31, 2014, indicates that the court examined the petitioner "under oath." The order forbids the respondent from contacting the petitioner and from getting within 1,000 feet of the petitioner, her house, her workplace, a particular school, and her husband's repair shop.

¶ 6 On November 7, 2012, the respondent filed a petition to vacate the stalking no contact order. He averred that the petitioner's initial petition was filled with "fantastic claims" and that her courtroom testimony was "mainly fabrication."

¶ 7 On December 13, 2012, the court held a hearing on the respondent's petition to vacate the no contact order. A transcript of the hearing is included in the record on appeal. The transcript shows that both parties appeared *pro se*. Neither party testified or otherwise presented evidence. However, the respondent argued in favor of vacating the plenary stalking no contact order. The respondent began his argument in this way: "Well, on November 1st we heard—Ms. Jacoby was heard on her petition for a no contact order. And in her petition and in her testimony and on cross-examination she made a number of claims,

very remarkable claims." The respondent went on to say that he played no part in the petitioner's dog being declared dangerous, and that the petitioner lied when she testified that he did play a role therein.

¶ 8 The respondent further argued to the circuit court that the petitioner initially testified that in June and early July the respondent telephoned her 50 times, but "on cross-examination we got it down to 15 or 30 or whatever the number was." The respondent denied the petitioner's allegations that he had threatened her in voice recordings and in a letter, and he noted that the petitioner had not produced such recordings or such a letter. In regard to the petitioner's allegation that the respondent broke into the house that the petitioner rented from him, the respondent argued as follows: "She again swore that I broke into her home on August 14, 2012. Yet she testified on November 1st that she was not living at 511 West Allen on August 14th, she'd already moved and had a new address in Cottage Hills, Illinois." At that point in the respondent's argument, the petitioner interjected, "That's not what I testified to, your Honor." The respondent also argued that the no contact order violated his first amendment right to freedom of speech, since the order was issued on the basis of various messages that the respondent had posted on Facebook but these messages were unrelated to the petitioner, were mere commentary on a poem and on community issues, and could not possibly constitute stalking.

¶ 9 After listening to the respondent's argument, the judge said that he had "heard the evidence," that he did not even need to reach the respondent's first amendment issue, and that "there was adequate evidence" that on August 14, 2012, the respondent attempted to remove items from the petitioner's residence. At that point in its discourse, the court briefly discussed the testimony of a sheriff's deputy. The court denied the respondent's motion to reconsider the plenary stalking no contact order.

¶ 10 The respondent filed a timely notice of appeal, thus perfecting the instant appeal.

¶ 12 Before this court, the respondent argues that the circuit court erred, and violated his first amendment right to the freedom of speech, in entering the plenary stalking no contact order.

¶ 13 The Stalking No Contact Order Act (the Act) allows a victim of stalking to seek a civil remedy requiring the stalker to stay away from the victim and from protected third parties. 740 ILCS 21/5 (West 2012). "Stalking generally refers to a course of conduct, not a single act." *Id.* Stalking includes "following a person, conducting surveillance of the person, appearing at the person's home, work or school, making unwanted phone calls, sending unwanted emails or text messages," and other behaviors. *Id.* An action under the Act is commenced by filing a petition for a stalking no contact order. 740 ILCS 21/20 (West 2012). The Act allows for emergency stalking no contact orders (740 ILCS 21/95 (West 2012)) and plenary stalking no contact orders (740 ILCS 21/100 (West 2012)). Prerequisite to any stalking no contact order is a judicial finding that the petitioner has been a victim of stalking by the respondent. 740 ILCS 21/80 (West 2012). At a hearing on a petition under the Act, the standard of proof is proof by a preponderance of the evidence. 740 ILCS 21/30 (West 2012).

¶ 14 Although the Act specifies the standard of proof at a hearing on a petition for a stalking no contact order, it does not specify the standard of appellate review of the order. In his brief before this court, the respondent suggests that the appropriate standard of review is whether the order is against the manifest weight of the evidence. This court agrees. The protections afforded by a plenary stalking no contact order are very similar to those afforded by a plenary order of protection issued pursuant to section 219 of the Illinois Domestic Violence Act of 1986 (750 ILCS 60/219 (West 2012)). The standard of review applicable to a plenary order of protection is whether the order is against the manifest weight of the

evidence. *Best v. Best*, 223 Ill. 2d 342, 348-49 (2006). This court will apply that same standard when reviewing a plenary stalking no contact order. An order is against the manifest weight of the evidence only if "the opposite conclusion is clearly evident" or the factual finding supporting the order is "unreasonable, arbitrary, or not based on the evidence presented." *Id.* at 350.

¶ 15 In the instant appeal, this court knows essentially nothing about the evidence presented, for the record on appeal does not include a transcript of the November 1, 2012, hearing that ended with the entry of the plenary order. The record sheet entry for that date clearly states that both parties appeared at the hearing and agreed to the entry of the plenary order. However, the written plenary order indicates that the petitioner testified under oath at the hearing, perhaps suggesting that the hearing was contested. At the hearing held on December 13, 2012 (a transcript of which is included in the record on appeal), the respondent repeatedly referred to the petitioner's testimony and cross-examination of November 1, 2012, and the court stated that it "heard the evidence" on November 1, 2012. Lacking a transcript of the hearing of November 1, 2012, this court cannot know what exactly happened at that hearing, who testified, how they testified, or what factual findings the circuit court made. This court certainly is in no position to critique the circuit court's decision-making.

¶ 16 In any appeal, the appellant has the burden of presenting a sufficiently complete record of the proceedings to support a claim of error, and in the absence of such a record on appeal, the reviewing court will presume that the circuit court's order was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). See also *People v. James*, 337 Ill. App. 3d 532, 533 (2003) (where record on appeal is incomplete, "reviewing court must construe any omission in favor of the judgment rendered by the court below"). Here, the respondent-appellant has failed to meet this burden. The

record is missing a key component—a transcript of the hearing at which the plenary order was entered. In his appellant's brief, the respondent purports to describe the petitioner's testimony and his own testimony at that hearing. However, "[a]ssertions of the evidence in an appellant's brief *** cannot serve as a substitute for a report of proceedings." *In re Marriage of Holem*, 153 Ill. App. 3d 1095, 1100 (1987).

¶ 17 Given the state of the record on appeal, this court must presume that the plenary stalking no contact order conformed to the law and was supported by sound factual findings. Accordingly, the judgment of the circuit court is affirmed.

¶ 18 Affirmed.